



COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

RIN 3038-AF17

Changing Position Title of Judgment Officer to Administrative Judge

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting technical amendments to its Rules Relating to Reparations to change the position title of the Judgment Officer to Administrative Judge and to incorporate gender neutral language, where applicable.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Eugene Smith, Director, Office of Proceedings, Commodity Futures Trading Commission, at (202) 418-5395 or esmith@cftc.gov, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: In February 2013, the Commission amended 17 CFR parts 10 and 12 to clarify the role and authority of its Judgment Officers.¹ In this rulemaking, the Commission is adopting technical amendments to 17 CFR part 12 that more accurately describe the duties performed by the adjudicator in reparations cases and other administrative proceedings by changing the title of Judgment Officer to Administrative Judge. The technical amendments adopted in this final rule simplify and improve the language of the rules by using plain language for the adjudicator instead of

¹ Proceedings Before the Commodity Futures Trading Commission, 78 FR 12933 (Feb. 26, 2013).

the overly legalistic term “Judgment Officer,” and by incorporating gender neutral language into part 12, where applicable; thereby, making the rules easier to understand.

Related Matters

A. Administrative Procedure Act

The amendments to the Commission’s regulations in this rulemaking do not establish any new substantive or legislative rules, but rather are technical amendments to its Rules Relating to Reparations to change the position title of the Judgment Officer to Administrative Judge and to incorporate gender neutral language, where applicable. The amendments to the Commission’s regulations relate solely to agency management, organization, procedure, and practice and provide technical corrections of a minor and administrative nature. Therefore, this rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act.² Additionally, an agency may issue a new rule in some circumstances without publication in the *Federal Register* of a notice of proposed rulemaking with an opportunity for comment if the agency for “good cause” finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are “impracticable, unnecessary, or contrary to the public interest.”³ As noted earlier, the amendments to part 12 are technical edits to improve the language of the rules and incorporate gender neutral language. Good cause thus exists as the final rule implements changes that affect internal agency management, organization and procedure that exempts it from notice and comment rulemaking. Further, as the revisions to the Commission’s regulations in this rulemaking will not cause any party to undertake efforts to comply with the regulations as revised,

² 5 U.S.C. 553(a) and (b)(A). Rulemaking procedures do not apply, to the extent that there is involved a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts or to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.

³ 5 U.S.C. 553(b).

the Commission has determined to make this rulemaking effective upon publication in the *Federal Register*.⁴

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities.⁵ The Commission is obligated to conduct a regulatory flexibility analysis for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act or any other law.⁶ This rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act. Accordingly, the Commission is not required to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (Paperwork Reduction Act).⁷ This final rule does not contain a collection of information as defined in the Paperwork Reduction Act and, therefore, is not subject to the requirements of the Paperwork Reduction Act.

D. Cost-Benefit Analysis

Section 15 of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000, provides that before promulgating a regulation under

⁴ Section 553(d) of the APA, 5 U.S.C. 553(d), provides, in part, that a rule may not be made effective less than 30 days before its effective date except as otherwise provided by the agency for good cause found and published with the rule.

⁵ See 5 U.S.C. 601 et seq.

⁶ 5 U.S.C. 601(2).

⁷ See 44 U.S.C. 3501 et seq.

the Act or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission.⁸ These rules govern internal agency organization, procedure, and practice, and therefore the Commission finds that none of the considerations enumerated in section 15(a)(2) of the Commodity Exchange Act, as amended, are applicable to these rules.

E. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act.⁹

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Consumer protection, Organization and functions (Government agencies), Reparations.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 12 as set forth below:

PART 12—RULES RELATING TO REPARATIONS

1. The authority citation for part 12 continues to read as follows:

Authority: 7 U.S.C. 2(a)(12), 12a(5), and 18.

2. Revise § 12.2 to read as follows:

§ 12.2 Definitions.

For purposes of this part:

Act means the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*

Administrative Judge means an employee of the Commission who is authorized to conduct all reparations proceedings. In appropriate circumstances, the functions of an Administrative Judge may be performed by an Administrative Law Judge.

Administrative Law Judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

⁸ 7 U.S.C. 19(a).

⁹ See 5 U.S.C. 801 through 808.

Commission means the Commodity Futures Trading Commission.

Commission decisional employee means an employee or employees of the Commission who are or may reasonably be expected to be involved in the decisionmaking process in any proceeding, including, but not limited to: an Administrative Judge; members of the personal staffs of the Commissioners, but not the Commissioners themselves; members of the staffs of the Administrative Law Judges, but not an Administrative Law Judge; members of the staffs of the Administrative Judges; members of the Office of the General Counsel; members of the staff of the Office of Proceedings; and other Commission employees who may be assigned to hear or to participate in the decision of a particular matter.

Complainant means a person who, individually or jointly with others, has applied to the Commission for a reparation award pursuant to section 14(a) of the Act, but shall not include a cross claimant or any other type of third-party claimant. The term “complainant” under this part applies equally to two or more persons who have applied jointly for a reparation award.

Complaint means any document which constitutes an application for a reparation award pursuant to section 14(a) of the Act, regardless of whether it is denominated as such.

Counterclaim means an application for a reparation award by a respondent against a complainant which satisfies the requirements of §12.19. A counterclaim does not mean a cross claim or other type of third party claim.

Director of the Office of Proceedings means an employee of the Commission who serves as the administrative head of that Office, with responsibility and authority to assure that the rules in this part are administered in a manner which will effectuate the purposes of section 14(b) of the Act. The Director is authorized to convene meetings of all personnel in the Office of Proceedings, including Administrative Judges,

Administrative Law Judges, and the Judges' personally assigned law clerks. The Director shall have the authority to delegate their duties to administer §§12.15, 12.24, 12.26, and 12.27, and, shall have the authority to assign and, if necessary, reassign the duties of, and set reasonable standards for performance for, all personnel in the Office, including the Administrative Judges, but not including Administrative Law Judges and their personally assigned law clerks.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but does not include:

(1) A discussion, after consent has been obtained from all of the named parties, between a party and an Administrative Judge or Administrative Law Judge, or the staffs of the foregoing, pertaining solely to the possibility of settling the case without the need for a decision;

(2) Requests for status reports, including questions relating to service of the complaint, and the registration status of any persons, on any matter or proceeding covered by this part; or

(3) Requests made to the Office of Proceedings or the Office of the General Counsel for interpretation of this part.

Formal decisional procedure means, where the amount of total damages claimed exceeds \$30,000, exclusive of interest and costs, a procedure elected by the complainant or a respondent where the parties may be granted an oral hearing. A formal decisional proceeding is governed by subpart E of this part.

Hearing means that part of a proceeding which involves the submission of proof, either by oral presentation or written submission.

Interested person means any party, and includes any person or agency permitted limited participation or to state views in a reparation proceeding, or other person who

might be adversely affected or aggrieved by the outcome of a proceeding (including the officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives of such persons), and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding.

Office of the General Counsel refers to the members of the Commission's staff who provide assistance to the Commission in its direct review of any proceeding conducted pursuant to this part.

Office of Proceedings means that Office within the Commission comprised of the Administrative Law Judges, Administrative Judges, the Director of that Office, the Proceedings Clerk, and members of the staffs of the foregoing, which administers the rules in this part, other than the rules in this part authorizing direct review by the Commission.

Order means the whole or any part of a final procedural or substantive disposition of a reparation proceeding by the Commission, an Administrative Law Judge, an Administrative Judge, or the Proceedings Clerk.

Party means a complainant, respondent or any other person or agency named or admitted as a party in a reparation matter.

Person means any individual, association, partnership, corporation or trust.

Pleading means the complaint, the answer to the complaint, any supplement or amendment thereto, and any reply to the foregoing.

Proceeding means a case in which the pleadings have been forwarded and in which a procedure has been commenced pursuant to §12.26.

Proceedings Clerk means that member of the Commission's staff in the Office of Proceedings who shall maintain the Commission's reparation docket, assign reparation cases to an appropriate decisionmaking official, and act as custodian of the records of proceedings.

Punitive damages means damages awarded (no more than two times the amount of actual damages) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a contract market. An order does not have to be actually executed to render a violation subject to punitive damages. As a prerequisite to an award of punitive damages, a complainant must claim actual and punitive damages, prove actual damages, and demonstrate that punitive damages are appropriate.

Registrant means any person who—

- (1) Was registered under the Act at the time of the alleged violation;
- (2) Is subject to reparation proceedings by virtue of section 4m of the Commodity Exchange Act, regardless of whether such person was ever registered under the Act; or
- (3) Is otherwise subject to reparation proceedings under the Act.

Reparation award means the amount of monetary damages a party may be ordered to pay.

Respondent means any person or persons against whom a complainant seeks a reparation award pursuant to section 14(a) of the Act.

Summary decisional procedure means, where the amount of total damages claimed does not exceed \$30,000, exclusive of interest and costs, a procedure elected by the complainant or the respondent wherein an oral hearing need not be held and proof in support of each party's case may be supplied in the form and manner prescribed by §12.208. A summary decisional proceeding is governed by subpart D of this part.

Voluntary decisional procedure means, regardless of the amount of damages claimed, a procedure which the complainant and the respondent have chosen voluntarily to submit their claims and counterclaims, allowable under this part, for an expeditious resolution by an Administrative Judge. By electing the voluntary decisional procedure, parties agree that a decision issued by an Administrative Judge shall be without

accompanying findings of fact and shall be final without right of Commission review or judicial review. A voluntary decisional proceeding is governed by subpart C of this part.

3. Amend § 12.5 as follows:

a. Revise paragraph (a); and

b. Remove the undesignated paragraph following paragraph (a).

The revision reads as follows:

§ 12.5 Computation of time.

(a) *In general.* In computing any period of time prescribed by the rules in this part or allowed by the Commission, the Director of the Office of Proceedings, an Administrative Judge, or an Administrative Law Judge, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation only when the period of time prescribed or allowed is less than seven (7) days.

* * * * *

4. In § 12.6, revise paragraph (a) to read as follows:

§ 12.6 Extensions of time; adjournments; postponements.

(a) *In general.* Except as otherwise provided by law or by the rules in this part, for good cause shown, the Commission, or an Administrative Judge, Administrative Law Judge, or the Director of the Office of Proceedings, before whom a matter is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by the rules in this part for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter,

the Commission or one of the other officials mentioned above may set a time limit for that action.

* * * * *

5. In § 12.7, republish paragraph (c) heading and revise paragraph (c)(1) to read as follows:

§ 12.7 Ex parte communications in reparation proceedings.

* * * * *

(c) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission, Administrative Law Judge, or an Administrative Judge may, to the extent consistent with the interests of justice and the policy of the Act, require the parties to show cause why their claims or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

* * * * *

6. Revise § 12.8 to read as follows:

§ 12.8 Separation of functions.

(a) An Administrative Judge, or Administrative Law Judge, will not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Commission engaged in the performance of investigative or prosecutorial functions for the Commission.

(b) No officer, employee, or agent of the Federal Government engaged in the performance of investigative or prosecutorial functions in connection with any proceeding shall, in that proceeding or a factually related proceeding, participate or advise in the decision of an Administrative Judge, or Administrative Law Judge, except

as a witness in the proceeding, without the express written consent of the parties to the proceeding. This paragraph (b) shall not apply to the Commissioners.

7. In § 12.9, republish paragraph (a) heading and revise paragraphs (a)(1) and (b) to read as follows:

§ 12.9 Practice before the Commission.

(a) *Practice*—(1) *By non-attorneys*. Individuals may appear *pro se* (on their own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust, or association may represent the corporation, trust, or association.

* * * * *

(b) *Debarment of counsel or representative during the course of a proceeding*. (1)

Whenever, while a proceeding is pending before them, an Administrative Judge or an Administrative Law Judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, such official may order that such person be precluded from further acting as counsel or representative in the proceeding. An immediate appeal to the Commission may be taken from any such order, pursuant to the provisions of §12.309, but the proceeding shall not be delayed or suspended pending disposition of the appeal; *Provided*, that the official may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(2) Whenever the Administrative Judge or Administrative Law Judge has issued an order precluding a person from further acting as counsel or representative in a proceeding, such official, within a reasonable time thereafter, shall submit to the Commission a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Commission should take respecting the appearance of such person as counsel or representative in other proceedings before the Commission.

* * * * *

8. In § 12.10, revise paragraphs (b) and (c) to read as follows:

§ 12.10 Service.

* * * * *

(b) *Service of orders and decisions.* A copy of all notices, rulings, opinions, and orders of the Proceedings Clerk, the Director of the Office of Proceedings, an Administrative Judge, an Administrative Law Judge, the General Counsel or any employee under the General Counsel's supervision as the General Counsel may designate, or the Commission shall be served by the Proceedings Clerk on each of the parties. The Commission, in its discretion and with due consideration for the convenience of the parties, may serve the aforementioned documents to the parties by electronic means.

(c) *Designation of person to receive service.* The first page of the first document filed in a proceeding by a party or participant shall include the contact information of a person authorized to receive service on their behalf. Thereafter, service of documents shall be made upon the person authorized unless service on the party is ordered by an Administrative Judge, an Administrative Law Judge or the Commission, or unless no person authorized to receive service can be found, or unless the person authorized to receive service is changed by the party upon due notice to all other parties.

9. In § 12.11, republish paragraph (d) heading and revise paragraphs (d)(1), (d)(2) introductory text, and (d)(2)(i) and (iii) to read as follows:

§ 12.11 Formalities of filing of documents with the Proceedings Clerk.

* * * * *

(d) *Signature—(1) Manner.* The original of all papers must be signed in ink by persons filing the same or by their duly authorized agents or attorneys.

(2) *Effect.* The signature on any document of persons acting either for themselves or as attorney or agent for another constitutes certification by them that:

(i) They have read the document and know the contents thereof;

* * * * *

(iii) To the best of their knowledge, information and belief, every statement contained in the document is true and not misleading; and

* * * * *

10. In § 12.12, revise paragraphs (b) introductory text and (b)(1) and (3) to read as follows:

§ 12.12 Signature.

* * * * *

(b) *Effect.* The signature on any document of any persons acting either for themselves or as attorney or agent for another constitutes certification by them that:

(1) They have read the document subscribed and know the contents thereof;

* * * * *

(3) To the best of their knowledge, information, and belief, every statement contained in the document is true and not misleading; and

* * * * *

11. In § 12.13, revise paragraph (b)(2) to read as follows:

§ 12.13 Complaint; election of procedure.

* * * * *

(b) * * *

(2) *Subscription and verification of the complaint.* Each complaint shall be signed personally by an individual complainant or by a duly authorized officer or agent of a complainant who is not a natural person. Complainant's signature shall be given under oath or affirmation under penalty of law attesting either that complainant knows the facts set forth in the complaint to be true, or believes the facts set forth to be true, in which

event the information upon which complainant formed that belief shall be set forth with particularity.

* * * * *

12. Revise § 12.14 to read as follows:

§ 12.14 Withdrawal of complaint.

At any time prior to service of notification to the complainant pursuant to § 12.15(a) of the Director of the Office of Proceedings' determination to forward the complaint to a registrant, complainant may file a written notice of withdrawal of the complaint which shall terminate the Commission's consideration of the complaint without prejudice to complainant's right to re-file a reparations complaint based upon the same set of facts within two years after the cause of action accrues. If the complainant has previously filed a notice of withdrawal of a complaint based upon the same set of facts, the notice of withdrawal of complaint shall terminate the case with prejudice to complainant's rights to re-file a complaint in reparations based on the same set of facts, but such termination shall be regarded by the Commission as without prejudice to complainant's right to seek redress in such alternative forums as may be available for adjudication of the claims.

13. In § 12.15, revise paragraph (b) to read as follows:

§ 12.15 Notification of complaint.

* * * * *

(b) *Determination not to forward complaint.* The Director may, in their discretion, refuse to forward a complaint as to a particular respondent if it appears that the matters alleged therein are not cognizable in reparations, or that grounds exist pursuant to § 12.24(c) or (d) for refusing to forward the complaint. If the Director of the Office of Proceedings should determine not to forward the complaint to all registrants named in the complaint in accordance with this section, no proceeding shall be held thereon and the

complainant shall be notified to that effect. If the Director determines to forward the complaint as to less than all of the registrants, the complainant shall be so notified. A termination of the complaint as to any registrant shall be regarded by the Commission as without prejudice to the right of the complainant to seek such alternative forms of relief as may be available.

14. Revise § 12.17 to read as follows:

§ 12.17 Satisfaction of complaint.

A respondent may satisfy the complaint:

(a) By paying to the complainant either the amount to which the complainant claims to be entitled as set forth in the complaint or such other amount as the complainant will accept in satisfaction of the claim; and

(b) By submitting to the Commission notice of satisfaction and withdrawal of the complaint, duly executed by the complainant and the respondent.

15. In § 12.18, revise paragraphs (b), (c), and (d) to read as follows:

§ 12.18 Answer; election of procedure.

* * * * *

(b) *Motion for reconsideration of determination to forward the complaint.* An answer may include a motion for reconsideration of the determination to forward the complaint, specifying the grounds therefor, which the Director of the Office of Proceedings, in their discretion, may grant by terminating the case pursuant to § 12.27, or deny by forwarding the pleadings and matters of record for an elected decisional proceeding pursuant to § 12.26. The inclusion in an answer of a motion for reconsideration shall not preclude a respondent, if the motion is denied, from moving for dismissal at a later stage of the proceeding for the same reasons cited in a motion for reconsideration pursuant to this paragraph (b).

(c) *Subscription and verification of the answer.* An answer shall be signed personally by each registrant on behalf of whom it is filed or by a duly authorized officer or agent of any such registrant who is not a natural person. Each registrant's signature shall be given under oath, or by affirmation under penalty of law, attesting that the signer has read the answer; that to the best of the signer's knowledge all of the statements in the answer, the counterclaim (if any), and the materials required by this part to be appended thereto, are accurate and true, and that the answer (and counterclaim, if any) has not been interposed for delay.

(d) *Affidavit of service.* The registrant shall file with the answer an affidavit showing that a true copy of the answer has been served upon the complainant, either personally or by first-class mail addressed to the complainant at the address set forth in the complaint.

* * * * *

16. In § 12.20, revise paragraphs (a) and (c) to read as follows:

§ 12.20 Response to counterclaim; reply; election of procedure.

(a) *Response to counterclaim.* If an answer asserts a counterclaim, the complainant shall, within thirty (30) days after service of the answer by the respondent:

(1) Satisfy the counterclaim as if it were a complaint, in the manner prescribed by § 12.17; or

(2) File a reply to the counterclaim with the Commission.

* * * * *

(c) *Election of decisional procedure.* If neither the complainant nor the respondent, in the complaint or answer respectively, has previously made an election of the summary decisional procedure or the formal decisional procedure, the complainant may make such an election in the reply.

17. In § 12.21, revise paragraph (a) to read as follows:

§ 12.21 Voluntary dismissal.

(a) At any time after the Director of the Office of Proceedings has served notification to the parties pursuant to §12.15 of the Director's determination to forward the complaint to the respondent for a response, either the complainant or the respondent may obtain dismissal of the complaint (or the proceeding, if one has commenced) by filing a stipulation of dismissal, duly executed by all of the complainants and each respondent against whom the complaint has been forwarded (or added as a party in the course of a proceeding); *provided however*, that if the stipulation is filed after any respondent has filed an answer, the terms of the stipulation shall include a dismissal of any counterclaims in the answer.

* * * * *

18. In § 12.22, revise paragraph (b) to read as follows:

§ 12.22 Default proceedings.

* * * * *

(b) *Default procedure.* Upon a party's failure to respond timely to a complaint or counterclaim as prescribed in §§12.16 and 12.20, or timely to comply with §12.25(b) or (c), the Director of the Office of Proceedings shall forward the pleadings, and other materials then of record, to an Administrative Judge or Administrative Law Judge who may thereafter enter findings and conclusions concerning the questions of violations and damages and, if warranted, enter a reparation award against the non-responding party. If the facts which are treated as admitted are considered insufficient to support a violation or the amount of reparations sought, the Administrative Judge or Administrative Law Judge may order production of supplementary evidence from the party not in default and may enter a default order and an award based thereon.

* * * * *

19. In § 12.23, revise paragraph (b) to read as follows:

§ 12.23 Setting aside of default.

* * * * *

(b) *Default order final.* A default order that has become final pursuant to §12.22(c) shall not be set aside except upon a motion filed and served by the defaulted party showing that the defaulted party should be relieved from the default order because of fraud perpetrated on a decisionmaking official or the Commission, mistake, excusable neglect, or because the order is void for want of jurisdiction. Such a motion shall also show that, if the default order were set aside, there would be a reasonable likelihood of success for the defaulted party's claim or defense on the merits and that no party would be prejudiced thereby. Motions to set aside a final default order for fraud, mistake, or excusable neglect shall be filed within one year after the order was issued. All motions to set aside default orders shall be decided, in the first instance, by the official who issued the order. A denial of a motion to set aside a default order that has become final shall be treated as an initial decision, which may be appealed to the Commission in accordance with the requirements of §12.401. A grant of a motion to set aside a final default order shall be treated as a nonfinal order which may be appealed only in accordance with the requirements of §12.309.

20. In § 12.24, revise paragraphs (a)(1)(iii) and (e) to read as follows:

§ 12.24 Parallel proceedings.

(a) * * *

(1) * * *

(iii) Is governed by a compulsory counterclaim rule of Federal court procedure which required the complainant in reparations to assert all of complainant's claims (including those based on alleged violations of the Commodity Exchange Act, and any regulation or order issued thereunder) as counterclaims in that proceeding;

* * * * *

(e) *Exceptions.* At the time notice of a parallel proceeding is filed pursuant to paragraph (b) of this section, or any time thereafter, any party, or the receiver or trustee, may file and serve upon other parties a statement in support of or in opposition to any action taken or to be taken pursuant to paragraph (c) or (d) of this section. This statement shall be addressed to the Office of Proceedings, attention of the Proceedings Clerk. Upon receipt of any such statement, the Proceedings Clerk shall immediately forward the statement to the official with responsibility over the case. The notice and the statements filed by the parties shall be reviewed by that official who, on or before the effective date of action taken pursuant to paragraphs (c)(1) and (2) and (d)(1) and (2) of this section, may take such actions as, in the official's opinion, are necessary to ensure that the parties to the matter or proceedings are not unduly prejudiced.

* * * * *

21. In § 12.25, revise paragraphs (b) and (c) to read as follows:

§ 12.25 Filing fees.

* * * * *

(b) *Fees payable upon filing an answer.* (1) If a complainant, in the complaint, has elected the voluntary decisional procedure, a respondent who, in the answer, elects the summary decisional procedure (available only where the amount of damages claimed in the complaint or as counterclaims does not exceed \$30,000) shall, at the time of filing the answer, pay a filing fee of \$75.00.

(2) If a complainant, in the complaint, has elected the voluntary decisional procedure, a respondent who, in the answer, elects the formal decisional procedure (available only where the amount of damages claimed in the complaint or as counterclaims exceeds \$30,000) shall, at the time of filing the answer, pay a filing fee of \$200.00.

(c) *Fees payable upon filing a reply.* In any case in which a counterclaim has been made, unless a complainant in the complaint, or the respondent in an answer, has elected the summary decisional procedure or the formal decisional procedure a complainant, who in the reply elects either of these procedures, shall, at the time of filing the reply, pay a filing fee of \$75.00 or \$200.00, respectively, depending whether the procedure elected by complainant is pursuant to subpart D or E of this part.

22. Revise § 12.26 to read as follows:

§ 12.26 Commencement of a reparation proceeding.

(a) *Commencement of voluntary decisional proceeding.* Where complainant and respondent in the complaint and answer have elected the voluntary decisional procedure pursuant to subpart C of this part and the complainant has paid the filing fee required by §12.25, the Director of the Office of Proceedings shall, if in the Director's opinion the facts warrant taking such action, forward the pleadings and all materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with subpart C of this part. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in subpart B of this part, within 50 days thereafter. A voluntary decisional proceeding commences upon service of such notification and order. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to an Administrative Judge for a final decision.

(b) *Commencement of summary decisional proceeding.* Where the amount claimed as damages, exclusive of interest and costs, in the complaint or in counterclaim does not exceed \$30,000, and either a complainant or a respondent in the complaint, answer, or reply, has elected the summary decisional procedure pursuant to subpart D of this part, and has paid the filing fee required by §12.25, the Director of the Office of Proceedings shall, if in the Director's opinion the facts warrant taking such action,

forward the pleadings and all materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with subpart D of this part. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in subpart B of this part, within 50 days thereafter. A summary decisional proceeding commences upon service of such notification. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to an Administrative Judge for disposition.

(c) *Commencement of formal decisional proceeding.* Where the amount claimed as damages in the complaint or as counterclaims exceeds \$30,000, exclusive of interest and costs, and either a complainant or a respondent in the complaint, answer or reply, has elected the formal decisional procedure pursuant to subpart E of this part, and has paid the filing fee required by §12.25, the Director of the Office of Proceedings shall, if in the Director's opinion the facts warrant taking such action, forward the pleadings and the materials of record to the Proceedings Clerk for a proceeding to be conducted in accordance with subpart E of this part. The Proceedings Clerk shall forthwith notify the parties of such action. Such notification shall be accompanied by an order issued by the Proceedings Clerk requiring the parties to complete all discovery, as provided in subpart B of this part, within 50 days thereafter. A formal decisional proceeding commences upon service of such notification and order. As soon as practicable after service of such notification, the Proceedings Clerk shall assign the case to an Administrative Judge. All provisions of this part that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the Administrative Judge.

23. In § 12.30, revise paragraph (c) to read as follows:

§ 12.30 Methods of discovery.

* * * * *

(c) *Sanctions for abuse of discovery.* If an Administrative Law Judge or an Administrative Judge finds that any party, without substantial justification, has necessitated the filing of a motion for a protective order or for an order compelling discovery, or any other discovery-related motions, that party shall, if the motion is granted, be ordered to pay, at the termination of the proceeding, the reasonable expenses of the moving party incurred in filing the motion, unless the decisionmaking official finds that circumstances exist which would make an award of such expenses unjust. If a decisionmaking official finds that any party, without substantial justification, has filed a motion for a protective order or for an order compelling discovery, or any discovery-related motions, that party shall, if the motion is denied, be ordered to pay, at the termination of the proceeding, the reasonable expenses of an adverse party incurred in opposing the motion, unless the decisionmaker finds that circumstances exist which would make an award of such expenses unjust.

* * * * *

24. In § 12.33, revise paragraphs (b), (c), and (d) to read as follows:

§ 12.33 Admissions.

* * * * *

(b) *Reply.* Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless within twenty (20) days after service of the request, the party upon whom the request is directed files and serves upon the party requesting a verified written answer or objection to the matter. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that an answering party qualify the answer and deny only a part of the matter of which an

admission is requested, the answering party shall specify so much of it as is true and qualify or deny the remainder. Answering parties may not give a lack of information or knowledge as a reason for failure to admit or deny unless they state that they have made reasonable inquiry and that the information known or reasonably available to them is insufficient to enable them to admit or deny. Parties who consider that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; they may deny the matter or set forth reasons why they cannot admit or deny it.

(c) *Determining sufficiency of answers or objections.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains the burden of showing that the objection is justified, the official presiding over discovery shall order that an answer be served. If such official determines that an answer does not comply with the requirements of this section, that official may order either that the matter is admitted or that an amended answer be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established and may be used as proof against the party who made the admission. However, the discovery or decisionmaking official may permit withdrawal or amendment when the presentation of the merits of the proceeding will be served thereby and the party who obtains the admission fails to satisfy such official that withdrawal or amendments will prejudice them in maintaining an action or defense on the merits.

25. Revise § 12.34 to read as follows:

§ 12.34 Discovery by a decisionmaking official.

(a) *Applicability.* The provisions of this section shall apply to all decisional proceedings commenced pursuant to §12.26. For the purposes of this section, the term “decisionmaking official” shall mean an Administrative Judge or Administrative Law Judge assigned to render a decision in the proceeding.

(b) *Production of documents and tangible things*—(1) *Order for production.* A decisionmaking official may, upon the official's own motion, order a party or non-party to produce copies of specifically designated documents, papers, books, accounts, or tangible things (or categories of any of the foregoing) which are in the possession, custody or control of the party, non-party or agent thereof, against whom the order is directed. Except as provided in paragraph (b)(2) of this section, a party or nonparty ordered to produce documents or any of the items under this paragraph (b)(1) shall file and serve the documents and items listed in the order within twenty (20) days from the date of service of the order, or within such period of time as the decisionmaking official may direct. The decisionmaking official may issue subpoenas to compel the production by parties or non-parties of such documents and tangible things as are described in this section.

(2) *Trade secrets, commercially sensitive or confidential information.* If any party or person against whom an order to produce has been directed acting in good faith has reason to believe that any documents or other tangible thing ordered to be produced contains a trade secret, or commercially sensitive or other confidential information, the party or person may, in lieu of serving any such document, in accordance with paragraph (b)(1) of this section, file and serve a written request for confidential treatment of such documents. Any such request for confidential treatment shall be accompanied by a verified statement identifying with particularity the information on those documents considered to be trade secrets, commercially sensitive or confidential information, with reasons therefor, and indicating which portions, if any, of those documents may be served on other parties without disclosure of such information. Upon considering a request for confidential treatment in accordance with this paragraph (b)(2), the decisionmaking official may, if upon a finding that the information identified in the request warrants confidential treatment and is not probative of any material fact in controversy, make

copies of the documents produced, delete such information from the copies, and serve the copies as modified upon the other parties, with or without an appropriate protective order limiting dissemination to the parties and their counsel, if any.

(3) *Inability to produce.* Any party or person who cannot produce documents or other tangible things called for in an order for production, because those documents or things are not in their possession, custody, or control, shall file and serve within the time provided in paragraph (b)(1) of this section a verified statement identifying the documents which cannot be produced and setting forth with particularity the reasons for non-production.

(c) *Order for written testimony.* The decisionmaking official may, upon the official's own motion, order a party or non-party witness to submit verified statements or written responses to interrogatories, or both, as to all relevant matters within the party's personal knowledge which are required in response to the order. A party or person ordered to file affidavits and/or verified written responses to interrogatories shall file and serve the documents within such period of time as the decisionmaking official may direct. The official may issue subpoenas to compel the filing by parties or non-parties of such verified statements and written responses as are described in this paragraph (c).

26. In § 12.35, revise the introductory text to read as follows:

§ 12.35 Consequence of a party's failure to comply with a discovery order.

If a party fails to comply with an order compelling discovery, or an order issued pursuant to § 12.34, the official assigned to render the decision in the case may, upon motion by a party or on the official's own motion, take such action in regard thereto as is just, including but not limited to the following:

* * * * *

27. In § 12.101, revise the section heading and the introductory text to read as follows:

§ 12.101 Functions and responsibilities of the Administrative Judge.

The Administrative Judge shall be responsible for the fair and orderly conduct of the proceeding and shall have the authority:

* * * * *

28. Revise § 12.102 to read as follows:

§ 12.102 Disqualification of Administrative Judge.

(a) *At their own request.* An Administrative Judge may withdraw from a voluntary decisional proceeding when they consider themselves to be disqualified on the grounds of personal bias, conflict of interest, or similar bases. In such event the Administrative Judge shall immediately notify the Commission and each of the parties of the withdrawal and of the basis for such action.

(b) *Upon the request of a party.* Any party may request an Administrative Judge to disqualify themselves on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an adverse ruling by the Administrative Judge may be sought without certification of the matter by the Administrative Judge only in accordance with the procedures set forth in §12.309.

29. In § 12.106, revise paragraph (a) to read as follows:

§ 12.106 Final decision and order.

(a) *When a final decision is required.* After all submissions of proof have been received, the Administrative Judge shall make the final decision. Upon its issuance, the final decision shall forthwith be filed with the Proceedings Clerk, and immediately served on the parties. The Proceedings Clerk shall also serve a notice, to accompany the final decision, of the effect of a failure by a party ordered to pay a reparation award to file the documents required by §12.407(c).

* * * * *

30. Revise § 12.200 to read as follows:

§ 12.200 Scope and applicability of this subpart.

The rules set forth in this subpart are applicable only to proceedings forwarded pursuant to §12.26(b). The rules in subpart B of this part permitting discovery are applicable in a summary decisional proceeding. Unless specifically made applicable, the rules prescribed in subparts C and E of this part shall not apply to such proceedings. Parties to a proceeding forwarded pursuant to §12.26(b) may, by signed agreement filed at any time prior to the issuance of the initial decision, or of any other order disposing of all issues in the proceeding, elect to have all of the issues in the proceeding decided pursuant to the voluntary decisional procedure. Upon receiving a timely filed stipulation signed by all parties evidencing such an election, the Administrative Judge shall conduct the proceeding and render a decision pursuant to subpart C of this part.

31. In § 12.201, revise the section heading, the introductory text, and paragraphs (a) and (d) to read as follows:

§ 12.201 Functions and responsibilities of the Administrative Judge.

The Administrative Judge shall be responsible for the fair and orderly conduct of the proceeding and shall have the authority—

(a) In the Administrative Judge's discretion, to conduct pre-decision conferences in accordance with § 12.206;

* * * * *

(d) To take such action as is appropriate under §12.35, if a party fails to comply with an order issued by the Administrative Judge pursuant to §12.34;

* * * * *

32. Revise § 12.202 to read as follows:

§ 12.202 Disqualification of Administrative Judge.

(a) *At their own request.* An Administrative Judge may withdraw from a summary decisional proceeding when they consider themselves to be disqualified on the grounds of

personal bias, conflict of interest, or similar bases. In such event, the Administrative Judge shall immediately notify the Commission and each of the parties of the withdrawal and of the basis for such action.

(b) *Upon the request of a party.* Any party may request an Administrative Judge to disqualify themselves on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an order denying such a request may be sought without certification of the matter by the Administrative Judge only in accordance with the procedures set forth in §12.309.

33. In § 12.204, revise paragraphs (a) and (b) to read as follows:

§ 12.204 Amended and supplemental pleadings.

(a) *Amendments to pleadings.* At any time before the parties have concluded their submission of proof, the Administrative Judge may allow amendments of the pleadings either upon written consent of the parties, or for good cause shown, provided however, that any pleading as amended shall not contain an allegation of damages in excess of \$30,000. Any party may file a response to a motion to amend the pleadings within ten (10) days after the date of service upon that party of the motion.

(b) *Supplemental pleadings.* At any time before the parties have concluded their submissions of proof, and upon such terms as are just, the Administrative Judge may, upon motion by a party, permit a party to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to any of the issues in the proceeding: *Provided however,* that any pleading as supplemented may not contain an allegation of damages in excess of \$30,000. Any party may file a response to a motion to supplement the pleadings within ten (10) days after the date of service upon that party of the motion.

* * * * *

34. In § 12.205, revise paragraphs (a) and (b), republish the paragraph (c) heading, and revise paragraphs (c)(1) and (2) to read as follows:

§ 12.205 Motions.

(a) *In general.* Motions for relief not otherwise specifically provided for in this subpart (§§12.200 through 12.210), other than discovery-related motions and motions for extensions of time and similar procedural orders, shall not be allowed. Except as otherwise specifically provided in this subpart, all motions permitted under the provisions of this subpart shall be directed to the Administrative Judge prior to the filing of the initial decision, and to the Commission after the initial decision has been filed. Motions for extensions of time and similar procedural orders may be acted upon at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion, or within such longer or shorter period as is established by the provisions of this part, or as the Administrative Judge or the Commission may direct.

(c) *Dismissal—(1) By the Administrative Judge.* An Administrative Judge, acting upon their own motion, may:

(i) Dismiss the entire proceeding without prejudice to counterclaims, if the Administrative Judge finds that the matters alleged in the complaint fail to state a claim cognizable in reparations; or

(ii) Order dismissal of any claim, counterclaim, or party from the proceeding if the Administrative Judge finds, after review of the record, that such claim or counterclaim (by itself or as applied to any party) is not cognizable in reparations.

(2) *Motion for dismissal by a party.* Any party who believes that grounds exist for dismissal of the entire complaint, or of any claim therein, or of any counterclaim or party

from the proceeding, may file a motion for dismissal specifying the claims or parties to be dismissed and the reasons therefor. Upon consideration of the whole record, the Administrative Judge may grant or deny such motion, in whole or in part.

* * * * *

35. Amend § 12.206 as follows:

- a. Redesignate paragraphs (a) through (g) as paragraphs (a)(1) through (7);
- b. Designate the introductory text as paragraph (a) introductory text;
- c. Revise newly designated paragraph (a) introductory text;
- d. Designate the undesignated paragraph following newly redesignated paragraph (a)(7) as paragraph (b); and
- e. Revise newly designated paragraph (b).

The revisions read as follows:

§ 12.206 Pre-decision conferences.

(a) At any time after a summary decisional proceeding has been commenced pursuant to §12.26(b), the Administrative Judge may, in their discretion, conduct one or more pre-decision conferences to be held in Washington, DC, or by telephone, with all parties, for the purposes of:

* * * * *

(b) At or following the conclusion of such a conference, the Administrative Judge may serve a pre-decision memorandum and order setting forth the agreements, if any, reached by the parties, any procedural determinations made by the Administrative Judge, and the issues for resolution not disposed of by the admissions or agreements by the parties. Such order, when issued, shall control the subsequent course of the proceeding unless modified to prevent injustice.

36. In § 12.207, revise paragraphs (a), (b), (c), and (d) to read as follows:

§ 12.207 Summary disposition.

(a) *Filing of motions, answers.* Any parties who believe that there is no genuine issue of material fact to be determined and that they are entitled to a decision as a matter of law concerning all issues of liability in the proceeding may file a motion for summary disposition at any time until the parties have concluded their submissions of proof. Any adverse party, within ten (10) days after service of the motion, may file and serve opposing papers or may countermove for summary disposition.

(b) *Supporting papers.* A motion for summary disposition shall include a statement of the material facts as to which the moving party contends there is no genuine issue, supported by the pleadings, and by affidavits, other verified statements, admissions, stipulations, and interrogatories. The motion may also be supported by briefs containing points and authorities in support of the contention of the party making the motion. When a motion is made and supported as provided in this section, unless otherwise ordered by the Administrative Judge, adverse parties may not rest upon the mere allegations, but shall serve and file in response a statement setting forth those material facts as to which they contend a genuine issue exists, supported by affidavits and other verified material. They may also submit a brief of points and authorities.

(c) *Summary disposition upon motion of the Administrative Judge.* If the Administrative Judge believes that there may be no genuine issue of material fact to be determined and that one of the parties may be entitled to a decision as a matter of law, the Administrative Judge may direct the parties to submit papers in support of and in opposition to summary disposition, substantially as provided in paragraphs (a) and (b) of this section.

(d) *Ruling on summary disposition.* The Administrative Judge may grant summary disposition if the undisputed pleaded facts, affidavits, other verified statements, admissions, stipulations, and matters of official notice show that:

(1) There is no genuine issue as to any material fact;

(2) There is no necessity that further facts be developed in the record; and

(3) A party is entitled to a decision in that party's favor as a matter of law.

* * * * *

37. In § 12.208, revise paragraph (b) to read as follows:

§ 12.208 Submissions of proof.

* * * * *

(b) *Oral testimony and examination.* The Administrative Judge may order an oral hearing for the presentation of testimony and examination of the parties and their witnesses when appropriate and necessary for the resolution of factual issues, upon motion by either a party or the Administrative Judge. An oral hearing held under this section will be convened by conference telephone call as provided in §12.209(b), except that an in-person hearing may be held in Washington, DC, under the circumstances set forth in §12.209(c).

38. Revise § 12.209 to read as follows:

§ 12.209 Oral testimony.

(a) *Generally.* When the Administrative Judge determines that an oral hearing is necessary and appropriate, such oral hearing will be held either by telephone or in person in Washington, DC, as set forth in paragraphs (b) through (d) of this section. The Administrative Judge, in their discretion with consideration for the convenience of the parties and their witnesses, will determine the time and date of such hearing. During an oral hearing, in their discretion, the Administrative Judge may regulate appropriately the course and sequence of testimony and examination of the parties and their witnesses and limit the issues.

(b) *Telephonic hearings.* When an Administrative Judge has determined to hold an oral hearing by telephone, an order to that effect will be issued at least 15 days prior to the hearing notifying the parties of the date and time of the hearing. The order will direct

the parties to confirm, at least 48 hours in advance of the hearing, that the correct telephone numbers for the parties and their witnesses are on file with the Office of Proceedings, and warn that failure to provide correct telephone numbers may be deemed waiver of that party's right to participate in the hearing, to present evidence, or to cross-examine other witnesses. If a party is unavailable by telephone at the appointed time, any other party in attendance may present testimony, and the Administrative Judge also may impose any appropriate sanction listed in §12.35. All telephonic hearings will be recorded electronically but will be transcribed only upon direction of the Administrative Judge (if necessary) or in the event of Commission review. The parties may secure a copy of the recording of the hearing from the Proceedings Clerk upon written request and payment of the cost of the recording.

(c) *Washington, DC, hearings.* In exceptional circumstances and when an in-person hearing is determined to be necessary in resolving the issues, the Administrative Judge may order an in-person hearing in Washington, DC, upon written request by a party and the agreement of at least one opposing party. The Administrative Judge will issue notice of the time, date, and location of an in-person hearing to the parties at least 30 days in advance of the hearing. Except as otherwise provided in this section, an in-person hearing will be held and recorded in the manner prescribed in §12.312(c) through (f). A party not agreeing to appear at the hearing in Washington, DC, may be ordered to participate by telephone. Any party not appearing in person or by telephone will be deemed to have waived the right to participate in the hearing, to present evidence, or to cross-examine other witnesses; further, that party may be subject to such action under §12.35 as the Administrative Judge may find appropriate. The Administrative Judge may order any party who requests or agrees to appear at a hearing in Washington, DC, and fails to appear without good cause, to pay any reasonable costs unnecessarily incurred by parties appearing at such a hearing.

(d) *Compulsory process.* An application for a subpoena requiring a non-party to participate in a telephonic hearing or to appear at an in-person hearing in Washington, DC, may be made in writing to the Administrative Judge without notice to the other parties. The standards for issuance or denial of an application for a subpoena, the service and travel fee requirements, and the method for enforcing such subpoenas are set forth at §12.313.

39. In § 12.210, revise paragraphs (a), (b) introductory text, (b)(1), and (c) to read as follows:

§ 12.210 Initial decision.

(a) *In general.* Proposed findings of fact and conclusions of law briefs shall not be allowed. As soon as practicable after all submissions of proof have been received, the Administrative Judge shall make the initial decision, which will be filed forthwith with the Proceedings Clerk. Upon filing of an initial decision, the Proceedings Clerk shall immediately serve upon the parties a copy of the initial decision and a notification of the effect of a party's failure timely to appeal the initial decision to the Commission, as provided in paragraphs (d) and (e) of this section, as well as the effect of a failure by a party who has been ordered to pay a reparation award timely to file the documents required by §12.407(c).

(b) *Content of initial decision.* In the initial decision in a summary decisional proceeding, the Administrative Judge shall:

(1) Include a brief statement of the findings as to the facts, with reference to those portions of the record which support those findings;

* * * * *

(c) *Costs; prejudgment interest.* The Administrative Judge may, in the initial decision, award costs (including the costs of instituting the proceeding, and if appropriate, reasonable attorneys' fees) and, if warranted as a matter of law under the

circumstances of the particular case, prejudgment interest to the party in whose favor a judgment is entered.

* * * * *

40. Amend § 12.303 as follows:

- a. Redesignate paragraphs (a) through (g) as paragraphs (a)(1) through (7);
- b. Designate the introductory text as paragraph (a) introductory text;
- c. Revise newly designated paragraph (a) introductory text;
- d. Designate the undesignated paragraph following newly redesignated paragraph (a)(7) as paragraph (b); and
- e. Revise newly designated paragraph (b).

The revisions read as follows:

§ 12.303 Pre-decision conferences.

(a) During the time period permitted for discovery pursuant to § 12.30(d), and thereafter, Administrative Law Judges may, in their discretion, conduct one or more pre-decision conferences to be held in Washington, DC, or by telephone, with all parties for the purposes of:

* * * * *

(b) At or following the conclusion of a pre-decision conference, Administrative Law Judges may serve a pre-decision memorandum and order setting forth the agreements reached by the parties, any procedural determinations made by them, and the issues for resolution not disposed of by admissions or agreements by the parties. Such an order shall control the subsequent course of the proceeding unless modified to prevent injustice.

41. In § 12.304, revise the introductory text and paragraph (e) to read as follows:

§ 12.304 Functions and responsibilities of the Administrative Law Judge.

Once an Administrative Law Judge has been assigned the case, the Administrative Law Judge shall be responsible for the fair and orderly conduct of a formal decisional proceeding and shall have the authority:

* * * * *

(e) In the Administrative Law Judge's discretion, to conduct pre-decision conferences, for the purposes prescribed in § 12.303, at any time after a proceeding has commenced pursuant to § 12.26(c);

* * * * *

42. Revise § 12.305 to read as follows:

§ 12.305 Disqualification of Administrative Law Judge.

(a) *At their own request.* An Administrative Law Judge may withdraw from a formal decisional proceeding when they consider themselves to be disqualified on the grounds of personal bias, conflict of interest, or similar bases. In such event, they shall immediately notify the Commission and each of the parties of the withdrawal and of the basis for such action.

(b) *Upon the request of a party.* Any party may request an Administrative Law Judge to disqualify themselves on the grounds of personal bias, conflict of interest, or similar bases. Interlocutory review of an order denying such a request may be sought without certification of the matter by an Administrative Law Judge, only in accordance with the procedures set forth in § 12.309.

43. In § 12.307, revise paragraphs (a) and (b) to read as follows:

§ 12.307 Amended and supplemental pleadings.

(a) *Amendments to pleadings.* At any time before the parties have concluded their submissions of proof, the Administrative Law Judge may allow amendments of the pleadings either upon written consent of the parties or for good cause shown. Any party

may file a response to a motion to amend the pleadings within ten (10) days after the date of service upon that party of the motion.

(b) *Supplemental pleadings.* At any time before the parties have concluded their submissions of proof, and upon such terms as are just, an Administrative Law Judge may, upon motion by a party, permit a party to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleadings sought to be supplemented and which are relevant to the issues in the proceeding. Any party may file a response to a motion to supplement the pleadings within ten (10) days after the date of service upon that party of the motion.

* * * * *

44. In § 12.308, revise paragraph (b), republish paragraph (c) heading, and revise paragraph (c)(1) to read as follows:

§ 12.308 Motions.

* * * * *

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten (10) days after service of the motion upon that party, or within such longer or shorter period as established by this part, or as the Administrative Law Judge or the Commission may direct.

(c) *Dismissal—(1) By the Administrative Law Judge.* The Administrative Law Judge, acting on their own motion, may, at any time after they have been assigned the case:

(i) Dismiss the entire proceeding, without prejudice to counterclaims, if they find that none of the matters alleged in the complaint state a claim that is cognizable in reparations; or

(ii) Order dismissal of any claim, counterclaim, or party from the proceeding if they find that such claim or counterclaim (by itself, or as applied to a party) is not cognizable in reparations.

* * * * *

45. In § 12.309, revise paragraphs (a)(1), (d), and (e) to read as follows:

§ 12.309 Interlocutory review by the Commission.

* * * * *

(a) * * *

(1) The appeal is from a ruling pursuant to §12.102, §12.202, or §12.305 refusing to grant a motion to disqualify an Administrative Judge or Administrative Law Judge;

* * * * *

(d) *Proceedings not stayed.* The filing of an application for interlocutory review and a grant of review shall not stay proceedings before an Administrative Law Judge (or an Administrative Judge, if applicable) unless that official or the Commission shall so order. The Commission will not consider a motion for a stay unless the motion shall have first been made to the Administrative Law Judge (or, if applicable, the Administrative Judge) and denied.

(e) *Interlocutory review by the Commission on its own motion.* Nothing in this section should be construed as restricting the Commission from acting on its own motion to review on an interlocutory basis any ruling of an Administrative Law Judge, Proceedings Officer or an Administrative Judge in any proceeding commenced pursuant to §12.26.

46. In § 12.310, revise paragraphs (a), (b), and (d) to read as follows:

§ 12.310 Summary disposition.

(a) *Filing of motions, answers.* Any parties who believe that there is no genuine issue of material fact to be determined and that they are entitled to a decision as a matter

of law concerning all issues of liability in the proceeding may file a motion for summary disposition at any time before a determination is made by the Administrative Law Judge to order an oral hearing in the proceeding. Any adverse party, within ten (10) days after service of the motion, may file and serve opposing papers or may countermove for summary disposition.

(b) *Supporting papers.* A motion for summary disposition shall include a statement of all material facts as to which the moving party contends that there is no genuine issue, supported by the pleadings, and by affidavits, other verified statements, admissions, stipulations, and interrogatories. The motion may also be supported by briefs containing points and authorities in support of the contention of the party making the motion. When a motion is made and supported as provided in this section, unless otherwise ordered by the Administrative Law Judge, an adverse party may not rest upon the mere allegations, but shall serve and file in response a statement setting forth those material facts as to which the adverse party contends a genuine issue exists, supported by affidavits and other verified material. The adverse party may also submit a brief of points and authorities.

* * * * *

(d) *Summary disposition upon motion of the Administrative Law Judge.* If the Administrative Law Judge believes that there may be no genuine issue of material fact to be determined and that one of the parties may be entitled to a decision as a matter of law, the Administrative Law Judge may direct the parties to submit papers in support of and in opposition to summary disposition, and may hear oral argument, substantially as provided in paragraphs (a), (b), and (c) of this section.

* * * * *

47. Revise § 12.311 to read as follows:

§ 12.311 Disposing of proceeding or issues without oral hearing.

If the Administrative Law Judge determines that the documentary proof and other tangible forms of proof submitted by the parties are sufficient to permit resolution of some or all of the factual issues in the proceeding without the need for oral testimony, the Administrative Law Judge may order that all proof relating to such issues be submitted in documentary and tangible form, and dispose of such issues without an oral hearing. In such an event, proof in support of the complaint, answer, and reply, may be found in those verified documents, in depositions on written interrogatories, in admissible documents obtained through discovery, in other verified statements of fact, documents, and tangible evidence.

48. In § 12.312, revise paragraphs (b) introductory text, (b)(2), (d)(1), (2), and (4), and (g) to read as follows:

§ 12.312 Oral hearing.

* * * * *

(b) *Location of hearing.* Unless the Director of the Office of Proceedings for reasons of administrative economy or practical necessity determines otherwise, and except as provided in this paragraph (b), the location of an oral hearing shall be in one of the following cities: Albuquerque, N.M.; Atlanta, Ga.; Boston, Mass.; Chicago, Ill.; Cincinnati, Ohio; Columbia, S.C.; Denver, Colo.; Houston, Tex.; Kansas City, Mo.; Los Angeles, Cal.; Minneapolis, Minn.; New Orleans, La.; New York, N.Y.; Oklahoma City, Okla.; Phoenix, Ariz.; San Diego, Cal.; San Francisco, Cal.; Seattle, Wash.; St. Petersburg, Fla.; and Washington, DC. The Administrative Law Judge may, in any case where a party avers, in an affidavit, that none of the foregoing cities is located within 300 miles of the party's principal residence, waive this paragraph (b) and, upon giving due regard for the convenience of all of the parties, order that the hearing be held in a more convenient locale.

* * * * *

(2) *Effect of failure to appear.* If any party to the proceeding fails to appear at the hearing, or at any part thereof, the non-appearing party shall to that extent be deemed to have waived the opportunity for an oral hearing in the proceeding. The Administrative Law Judge, for just cause, may take such action as is appropriate pursuant to §12.35 against a party who fails to appear at the hearing. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present may present evidence, in whole or in part, in the form of affidavits or by oral testimony, before the Administrative Law Judge.

* * * * *

(d) * * *

(1) *Conduct direct and cross-examination of parties and witnesses.* All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation, which shall be administered by the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, parties shall be entitled to present oral direct testimony and other documentary proof, and to conduct direct examination and cross examine adverse parties and witnesses. To expedite the hearing, the Administrative Law Judge may, in their discretion, order that the direct testimony of the parties and their witnesses be presented in documentary form, by affidavit, interrogatory, and other documents. In any event, the Administrative Law Judge, in their discretion, may permit cross examination, without regard to the scope of direct testimony, as to any matter which is relevant to the issues in the proceeding;

(2) *Introduce exhibits.* The original of each exhibit introduced in evidence or marked for identification shall be filed unless the Administrative Law Judge permits the substitution of copies for the original documents. A copy of each exhibit introduced by a party or marked for identification shall be supplied by the introducing party to the Administrative Law Judge and to each other party to the proceeding. Exhibits shall be

maintained by the reporter who shall serve as custodian of the exhibits until they are transmitted to the Proceedings Clerk pursuant to paragraph (f) of this section;

* * * * *

(4) *Make offers of proof.* When an objection to a question propounded to a witness is sustained, examiners may make a specific offer of what they expect to prove by the answer of the witness. Rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

* * * * *

(g) *Proposed findings of fact and conclusions of law; briefs.* An Administrative Law Judge, upon their own motion or upon motion of a party, may permit the filing of post-hearing proposed findings of fact and conclusions of law. Absent an order permitting such findings and conclusions, none shall be allowed. Unless otherwise ordered by the Administrative Law Judge and for good cause shown, the proposed findings and conclusions (including briefs in support thereof), shall not exceed twenty-five (25) pages and shall be filed not later than forty-five (45) days after the close of the oral hearing.

49. In § 12.313, revise paragraphs (a)(2) and (b)(3), republish paragraph (c) heading, and revise paragraphs (c)(1) and (2) and (c)(3)(ii) to read as follows:

§ 12.313 Subpoenas for attendance at an oral hearing.

(a) * * *

(2) *Standards for issuance or denial of subpoenas.* The Administrative Law Judge considering any application for a subpoena shall issue the subpoena if they are satisfied the application complies with this section and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. In the event they determine that a requested subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly

burdensome, the Administrative Law Judge may refuse to issue the subpoena, or may issue it only upon such conditions as they determine fairness requires.

(b) * * *

(3) *Rulings*. The motion shall be decided by the Administrative Law Judge and the order shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the witnesses as may appear necessary and appropriate for the protection of the public interest.

(c) *Service of subpoenas*—(1) *How effected*. Service of a subpoena upon a party shall be made in accordance with § 12.10. Service of a subpoena upon any other person shall be made by delivering a copy of the subpoena to them as provided in paragraph (c)(2) or (3) of this section, and by tendering to them the fees for one day's attendance and the mileage as specified in paragraph (e) of this section. When the subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service.

(2) *Service upon a natural person*. Delivery of a copy of a subpoena and tender of fees and mileage to a natural person may be effected by:

(i) Handing them to the person;

(ii) Leaving them at the person's office with the person in charge thereof or, if there is no one in charge, by leaving the subpoena in a conspicuous place therein;

(iii) Leaving them at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;

(iv) Mailing them by registered or certified mail to them at their last known address; or

(v) Any other method whereby actual notice is given to the person and the fees and mileage are timely made available.

(3) * * *

(ii) Mailing them by registered or certified mail to any such representative at the person's last known address; or

* * * * *

50. In § 12.314, revise paragraphs (a) and (b)(1) to read as follows:

§ 12.314 Initial decision.

(a) *In general.* The Administrative Law Judge as soon as practicable after the parties have completed their submissions of proof, or after the conclusion of an oral hearing if one is held, shall render the initial decision, which shall forthwith be filed with the Proceedings Clerk, and a copy of which shall be served immediately by the Proceedings Clerk upon each of the parties. The Proceedings Clerk shall also serve a notice, to accompany the initial decision, of the effect of a party's failure timely to appeal to the Commission the initial decision, as provided in paragraphs (d) and (e) of this section, and the effect of a failure of a party who has been ordered to pay a reparation award timely to file the documents required by § 12.407(c).

(b) * * *

(1) Include a brief statement of findings as to the facts, with references to those portions of the record which support those findings;

* * * * *

51. Revise § 12.402 to read as follows:

§ 12.402 Appeal of disposition of less than all claims or parties in a proceeding.

(a) *In general.* Where two or more different claims for relief are presented, or where multiple parties are involved, in a proceeding forwarded pursuant to §12.26(b) or (c), the Administrative Judge or Administrative Law Judge, may upon the Judge's own motion or by motion of a party, direct that an initial decision or other order disposing of one or more, but fewer than all of the claims or parties, shall be final and immediately appealable to the Commission. Such a direction may be made only upon an express

determination that there is no just reason for delay. When such a direction is made, a party may appeal the initial decision or order in accordance with the procedure prescribed by §12.401.

(b) *When decision is not appealable.* In the absence of such a direction by the Administrative Judge or an Administrative Law Judge, an initial decision or order disposing of fewer than all of the claims or all of the parties shall be subject to revision by the decisionmaker at any time before a disposition is made of all remaining claims or parties, and no appeal may be taken to the Commission pursuant to this section.

52. Revise § 12.405 to read as follows:

§ 12.405 Leave to adduce additional evidence.

Any time prior to issuance of its final decision pursuant to §12.406, the Commission may, after notice to the parties and an opportunity for them to present their views, reopen the hearing to receive further evidence. The application shall show to the satisfaction of the Commission that the additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence at the hearing. The Commission may receive the additional evidence or may remand the proceeding to the Administrative Judge or Administrative Law Judge to receive the additional evidence.

53. In § 12.407, revise paragraphs (c) introductory text and (d) to read as follows:

§ 12.407 Satisfaction of reparation award; enforcement; sanctions.

* * * * *

(c) *Automatic suspension.* A person required to pay a reparation award shall be prohibited from trading on all contract markets and if such person is registered, the registration shall be suspended automatically, without further notice, unless such person shall, within fifteen (15) days after the time limit for satisfaction of an award (as prescribed in paragraph (a) or (b) of this section) expires, file with the Proceedings Clerk and serve on the other parties:

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that the amount required has been paid in full including prejudgment interest if awarded and post-judgment interest at the prevailing rate computed in accordance with 28 U.S.C. 1961 from the date directed in the final order to the date of payment, compounded annually. In the event an award of post-judgment interest is inadvertently omitted, such interest nevertheless shall run as calculated in accordance with 28 U.S.C. 1961 and the rules in this part.

* * * * *

54. In § 12.408, revise the introductory text and paragraphs (a)(2) introductory text, (a)(2)(ii) and (iii), (a)(3), (4), and (6), and (b) to read as follows:

§ 12.408 Delegation of authority to the General Counsel.

Pursuant to the authority granted under section 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commission hereby delegates, until such time as it orders otherwise, the following functions to the General Counsel, to be performed by them, or such person or persons under their direction as they may designate from time to time:

(a) * * *

(2) Remand, with or without specific instructions, initial decisions or other orders disposing of the entire proceeding to the appropriate officer (Director of the Office of Proceedings, Administrative Judge, or Administrative Law Judge) in the following situations—

* * * * *

(ii) Where, in their judgment, clarification or supplementation of an initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; and

(iii) Where, in their judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed;

(3) Deny applications for interlocutory review by the Commission of a ruling of an Administrative Judge or Administrative Law Judge in cases in which the Administrative Judge or Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by §12.309, and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Judge or Administrative Law Judge, or the suspension of, or failure to suspend, an attorney from participating in reparation proceedings;

(4) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge (or Administrative Judge), in a proceeding where such appeal is not filed or perfected in accordance with §12.401, and deny any application for interlocutory review if it is not filed in accordance with §12.309;

* * * * *

(6) Enter any order that, in their judgment, will facilitate or expedite Commission review of an initial decision or other order disposing of the entire proceeding.

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the General Counsel believes it appropriate, the General Counsel or their designee may submit the matter to the Commission for its consideration.

* * * * *

Issued in Washington, DC, on November 3, 2021, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

NOTE: The following appendix will not appear in the Code of Federal Regulations.

**Appendix to Changing Position Title of Judgment Officer to Administrative Judge –
Commission Voting Summary**

On this matter, Acting Chairman Behnam and Commissioners Stump and Berkovitz voted in the affirmative.* No Commissioner voted in the negative.

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* Commissioner Berkovitz submitted his written vote on this matter prior to departing the Commission on October 15, 2021.